IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7848 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-
and
Hon'ble MR.JUSTICE H.K.RATHOD sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO No

2. To be referred to the Reporter or not? No :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO No

5. Whether it is to be circulated to the Civil Judge? No :

UNITED INDIA INS CO LTD

Versus

NITESHKUMAR TARACHAND LALWANI

Appearance:
MR PV NANAVATI for Petitioner
Mr.A.B.Prajapati for Respondent No.1
NOTICE SERVED for Respondent No. 3
Respondent No.2 - deleted

CORAM : MR.JUSTICE D.C.SRIVASTAVA
and
MR.JUSTICE H.K.RATHOD

Date of decision: 24/07/2000

ORAL JUDGEMENT

1. In response to the notice issued to the respondents for hearing on admission of this Appeal Shri A.B.Prajapati, learned Counsel appears for the respondent No.1. The respondent No.2 has been deleted. None appears for the respondent No.3 despite sufficient service of notice.

2. With consent of Shri P.V.Nanavati, learned Counsel for the appellant and Shri A.B.Prajapati, learned Counsel for the respondent we propose to dispose of this Appeal finally at the admission stage.

3. The accident in question occurred on 18.12.1993 at 1.00 p.m. Minor Niteshkumar Tarachand Lalwani came out of his house and was going for tuition when he was hit by Maruti Car bearing No.GJI 5105. It was alleged that the Maruti Car insured with the appellant was being driven at a great speed rashly and negligently by the driver. The car was owned by the opponent No.2 and insured with the appellant. Minor fell down and sustained injuries. The claim petition was preferred claiming compensation under various heads. The total compensation of Rs.2 lacs was claimed from the opposite parties.

4. Before the Tribunal the owner of the vehicle did not appear to contest the petition. It was contested only by the appellant - Insurance Company. In short, the defence was denial of allegations made in the claim petition and also liability to pay compensation.

5. The Tribunal, after considering the entire evidence on record, awarded net compensation of Rs.1,67,600/-, the details of which are given in the end of Para : 6 of the judgment. Interest at the rate of 15 % p.a. from the date of petition till realisation was also awarded. Proportionate cost was also awarded against the appellant.

6. We have examined the award rendered by the Tribunal. The manner of accident is not disputed by the appellant. However, in our opinion, a sum of Rs.75,000/awarded by the Tribunal todards disfigurement, discomfort and future loss of income is some what excessive and it requires reduction. We feel that interest of justice will be met if this amount of Rs.75,000/- is reduced by a sum of Rs.20,000/-. If this is done the total amount of compensation will come to Rs.1,47,600/-. Other portion of the Award regarding interest and proportionate cost hardly requires interference.

7. The Appeal is, therefore, partly allowed. The Award of the Tribunal is modified to the extent that the net compensation of Rs.1,67,600/- shall be substituted by figure of Rs.1,47,600/-. Remaining direction of the Tribunal shall remain intact. No order as to costs. The amount under modified award rendered by this Court shall be deposited by the appellant before the Tribunal, if not already deposited, within a period of two weeks from today and thereafter the amount shall be paid to the claimant by A/c. Payee cheque.

In view of this, the direction of the tribunal for investment in Nationalised Bank is set aside.

sd/-

(D. C. Srivastava, J.)

Date : July 24, 2000 sd/-

(H. K. Rathod, J.)

sas